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Attorney for Plaintiffs

United States District Court
Eastern District of Washington
Before the Hon. Salvador Mendoza Jr.

Reginald Blair et al.,

Plaintiffs,

v.

Soap Lake Natural Spa & Resort
LLC et al.,

Defendants.

No. 2:19-CV-00083-SMJ

Plaintiffs' Reply to Defendants'
Response to Motion for Leave
of Court to Amend Answer to
Counterclaim by Adding an
Anti-SLAPP Affirmative
Defense

Come now Plaintiffs, through their counsel of record, and reply to Defendants' response to their motion to amend. ECF Nos. 139, 141.

Defendants argue that "immunity from civil liability" under RCW 4.24.510 does not apply to counterclaims because they are protected by litigation privilege. ECF No. 141 at 2-4. Defendants cite to a California appellate case without any explaining why

1 Washington's anti-SLAPP statute should be interpreted the same
2 way as California's anti-SLAPP statute. *Id.* at 3:16-4:3. Defendants
3 cite to *Deatherage v. Examining Bd. of Psych.*, 134 Wn.2d 131, 135,
4 948 P.2d 828 (1997) for the definition of "litigation privilege." *Id.* at
5 3:2-6. But that case involved the privilege being applied to an expert
6 witness and his testimony, not a party and her counterclaim. *Id.* The
7 rule that applies to parties in litigation is stated in the Restatement
8 (Second) of Torts:

9 A party to a private litigation ... is absolutely privileged to
10 publish defamatory matter concerning another in
11 communications ... during the course and as a part of, a
 judicial proceeding in which he participates, if the matter
 has some relation to the proceeding.

12 *Id.* at *Parties to Judicial Proceedings*, § 587 (1977) (emphasis added).

13 Defendants' civil conspiracy counterclaim is not a defamation claim
14 so the litigation privilege does not apply. The critical distinction is
15 that Defendants' counterclaims are not merely insulting, harmful or
16 offensive statements made in the course of litigation. They are legal
17 acts with independent legal significance – they state "claims" that
18 can lead to "civil liability." If the Court grants the litigation privilege
19 to Defendants, Washington's anti-SLAPP statute would cease to
20 function. The Court should not grant Defendants litigation privilege.

1 Defendants claim that Plaintiffs' late amendment would be
2 prejudicial, but don't provide any explanation of how they are
3 prejudiced by the late notice. ECF No. 5:11-6:12.

4 Defendants attempt to mislead the Court by stating:

5 Plaintiffs concede that when Mr. Wen was deposed [on
6 Nov. 21, 2019] he testified that Plaintiffs' Labor &
7 Industries wage claims were part of "a conspiracy to
sabotage the business [that] was well organized and
plotted."

8 *Id.* at 6:15-19. They cite Plaintiffs Motion, ECF No. 138 at 1885. A
9 review of Plaintiffs' motion shows that Plaintiffs' motion did not
10 concede any such thing. ECF No. 138 at 4 (referencing an email from
11 Mr. Wen and a declaration of Mr. Wen, not his deposition).

12 Defendants complain that Plaintiffs should have known this fact –
13 yet Defendants *chose* to *not* place Plaintiffs on notice by purposefully
14 excluding it from their pleadings. ECF No. 66. The Court should not
15 reward Defendants for hiding the ball.

16 Plaintiffs respectfully ask the Court to grant the motion for leave
17 to amend.

18
19 Dated: July 15, 2022

Respectfully Submitted,

20 s/Adam R. Pechtel

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SERVICE CERTIFICATE

I certify that July 15, 2022, I electronically filed the foregoing with the District Court Clerk using the CM/ECF System, which will send notification of such filing to the following:

Jerry Moberg, Attorney for Defendants

James Baker, Attorney for Defendants

s/Adam R. Pechtel
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